

REMARKS

Claims 1-5, 7-17, 19-49, and 51-58 are pending in the subject application. Claims 1, 2, 39, 49, and 57 are amended and claim 4 is canceled, without prejudice. Applicants submit that the amendments herein introduce no new matter, support therefore being found throughout the application and drawings as originally filed.

The Applicants appreciate the Examiner's thorough examination of the subject application and request reconsideration based on the amendments and the following remarks.

1. Claim Objections

Claim 2 is objected to as reciting the term "mechanism" twice. Applicants respectfully submit that the second recital of "mechanism" was deleted in Applicants' response filed on January 25, 2009. In any event, Applicants have again amended Claim 2 herein to correct this typographical error.

2. 35 U.S.C. §103 Rejections

Claims 1-5, 7-17, 19-49, and 51-58 are rejected under 35 U.S.C. §103(a) over U.S. Patent No. 4,175,704 to Cohen (hereinafter "Cohen") and U.S. Patent No. 5,059,188 to Goddard (hereinafter "Goddard"). Applicants respectfully traverse.

The Office acknowledge that Cohen does not teach or suggest delivery of a spray or mist with maximum dimensions or in an elliptical shape (pages 3 and 4 of the Office action). However, the Office relies upon Goddard for the alleged teaching of a nozzle hole opening with a diameter of 1-2 mm. The Office asserts that it would have been obvious to provide Cohen's device with the hole opening of Goddard, and that such an opening in Cohen's device would provide Applicants' claimed delivery range. Applicants respectfully disagree.

Goddard describes a dropper bottle for administering eye drops to the eye. According to Goddard, the dropper bottle is positioned above the eye with the bottle positioned such that the hole opening is facing downwards over the eye. The bottle is squeezed, and a drop of fluid is released through the hole opening into the eye by gravity. Thus, Goddard's dropper bottle functions like a well-known eye drop bottles, but includes a guide member to assist in properly positioning the dropper bottle for administration to the eye.

Thus, Goddard clearly describes a very different system for delivery which merely releases a drop of fluid downwards through an opening for delivery via gravity. Such a delivery system is clearly distinct from Applicants' and Cohen's which delivers a substance to the eye in the form of a spray or mist without the assistance of gravity. As such, Goddard does not teach or suggest a delivery system that delivers a substance in the form of a spray or mist with a maximum spray dimension and/or with a particular spray shape or how such a spray or mist could be provided. Further, one would not be motivated to modify a spray/mist delivery device based on the design for an eye dropper device or that such a modification would provide any likelihood of success. Applicants further submit that neither Cohen nor Goddard at all teach or suggest any type of an elliptical delivery device.

In view of the above, it is respectfully submitted that claims 1, 2, and 57, and all claims dependent therefrom, are patentable over Cohen and Goddard. Reconsideration and withdrawal of the rejection is respectfully requested.

With respect to claim 49, in which Applicants recite a method for the delivery of a substance to the ocular surface of a patient wherein the delivery device is positioned in front of the eye without contacting the eye and the substance is delivered in the form of a spray or mist in a generally horizontal direction, Applicants maintain the Cohen does not teach or suggest such a method. Rather, Cohen specifically provides a device which has a conical outlet extension that is placed on the face surrounding the eye.

There is no teaching or suggest to modify Cohen so as to provide Applicants' method. As such, it is respectfully submitted that claim 49, and all claims dependent therefrom, are patentable over Cohen. Reconsideration and withdrawal of the rejection is respectfully requested.

CONCLUSION

It is respectfully submitted that the subject application is in a condition for allowance. Early and favorable action is requested. If for any reason a fee is required, a fee paid is inadequate or credit is owed for any excess fee paid, you are hereby authorized and requested to charge Deposit Account No. 04-1105. The Examiner is invited to contact applicant's undersigned representative by telephone at the number listed below to discuss any outstanding issues.

Respectfully submitted,

Date: November 11, 2009

By: /Lisa Swiszc Hazzard/
Lisa Swiszc Hazzard (Reg. No. 44,368)
EDWARDS ANGELL PALMER & DODGE LLP
P.O. Box 55874
Boston, Massachusetts 02205
Tel. No. (617) 517-5512

Customer No. 21,874